

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 23-90086-cml
TEHUM CARE SERVICES, INC., . Chapter 11
Debtor. . 515 Rusk Street
Houston, Texas 77002
. Tuesday, November 14, 2023
8:47 a.m.
.

TRANSCRIPT OF STIPULATION AND AGREED ORDER REGARDING
APPOINTMENT OF JUDGE CHRISTOPHER S. SONTCHI (RET.) AS MEDIATOR
AND GOVERNING RELATED MEDIATION PROCEDURES [1095]
BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 8:47 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Okay. Good morning, everyone. This is
4 Judge Lopez. Today is November 14th. I'm going to call the
5 8:45 case, Tehum Care Services, on what I'm construing as a
6 request for emergency consideration to appoint a mediator.

7 So why don't I take appearances in the courtroom.
8 And if you know you're going to be speaking today, why don't
9 you hit "five star" and I will unmute your line. There's about
10 50 people on the line, so I've enabled the mute feature. Once
11 I unmute your line, please just monitor yourselves. Thank you.

12 Mr. Brookner, good morning.

13 MR. BROOKNER: Good morning, Your Honor. Jason
14 Brookner from Gray Reed for the debtor, and I have several
15 colleagues back at the ranch who may also be on the line.

16 THE COURT: Okay. Thank you.

17 Mr. Zluticky, good morning.

18 MR. ZLUTICKY: Good morning, Your Honor. Nick
19 Zluticky for the Official Committee of Unsecured Creditors. I
20 have some colleagues appearing remotely as well.

21 THE COURT: Thank you very much. Good morning.

22 Mr. Nguyen, good morning.

23 MR. NGUYEN: Good morning, Your Honor. Ha Nguyen for
24 the U.S. Trustee. I also have my colleague, Andrew Jimenez, in
25 the courtroom with me. Thank you.



1 THE COURT: Good morning.

2 MR. SHANNON: Good morning, Your Honor. R.J. Shannon
3 of Shannon & Lee LLP, here today just on behalf of Clarence
4 Dean. If you'll remember, we represented some other people
5 earlier in the case on a limited matter. Today, I'm just here
6 on behalf of Clarence Dean.

7 THE COURT: Okay. Thank you very much.

8 Alrighty. I'm going to hit five -- I'm going to
9 unmute a few lines here. Here's a (302) number.

10 MR. SONTCHI: Hello, Your Honor. It's Christopher
11 Sontchi. I just -- I don't know if I'm going to speak or not,
12 but I wanted to let you know I was on the line.

13 THE COURT: Thank you very much. Good morning,
14 Mr. Sontchi.

15 MR. SONTCHI: Good morning.

16 THE COURT: Here's a (214) number. A (214) number?

17 MR. GLUCK: Your Honor, I had it muted. Good
18 morning, Your Honor. Kristian Gluck of Norton Rose Fulbright
19 on behalf of M2 LoanCo.

20 THE COURT: Okay. Good morning.

21 MR. GLUCK: Good morning.

22 THE COURT: Here's another (214) number.

23 MS. HAYWARD: Good morning, Your Honor. Melissa
24 Hayward here on behalf of Perigrove 1018, M2 HoldCo, and
25 YesCare.



1 THE COURT: Okay. Good morning.

2 Alrighty. Here's a (602) number.

3 MR. STAPLETON: Good morning, Your Honor. Warren
4 Stapleton on behalf of the Arizona Department of Corrections.

5 THE COURT: Good morning.

6 Okay. I think I have covered everyone. Why don't I
7 turn it over to Mr. Brookner, and then I'll hear from the
8 United States Trustee, and then I'll share some thoughts.

9 MR. BROOKNER: Thank you, Your Honor. Do you want to
10 share thoughts first, or do you want me to go first?

11 THE COURT: No, no, no. You guys asked for the --

12 MR. BROOKNER: Okay.

13 THE COURT: Well, you didn't ask. You filed a stip,
14 but it was -- the U.S. Trustee filed something. I just thought
15 it all made sense to just talk a little bit about where we are.

16 MR. BROOKNER: I think that's great, Your Honor. If
17 it's okay with Your Honor, what I'd like to do is just start
18 with a little chronology --

19 THE COURT: Okay.

20 MR. BROOKNER: -- of kind of where we are, why
21 we're here today, and I think it will naturally unfold and
22 self-explain kind of what we're doing.

23 THE COURT: Okay.

24 MR. BROOKNER: So we were here on October 17th for a
25 disclosure statement hearing on what was then our first amended



1 disclosure statement. And Your Honor very clearly said, go
2 back, make it better, make it more fulsome, give me more
3 information, and then reset the hearing for November.

4 We did that, and we filed our second amended
5 disclosure statement and plan on October 27th, which appear
6 at Docket Numbers 1071 and 1072, with a comparison at Docket
7 Number 1073.

8 At the same time, we filed a new motion to approve
9 the disclosure statement at Docket Number 1082, and we noticed
10 everything up for a final hearing -- not a conditional hearing,
11 but a final hearing -- on December 6th, and that notice appears
12 at Docket Number 1077. And that provided all parties in
13 interest with more than the required 28-day notice under the
14 bankruptcy rules to ensure that we had fulsome notice and there
15 were no surprises and there was no rush.

16 During this period, the debtor and the Committee
17 remained in regular contact, and we relistened to the October
18 17th hearing several times, and we reread the disclosure
19 statement objections.

20 THE COURT: What about the portion that said rethink
21 the fundamental deal?

22 MR. BROOKNER: I'm getting there.

23 THE COURT: Let's just get there.

24 MR. BROOKNER: Okay. And so, in connection with
25 those discussions, what we said was let's find an independent



1 third party from outside the Circuit to come in and relook at
2 this in every single way: talk to the parties, look at the
3 deal, talk to the parties about everything that's on the table,
4 and see where we go.

5 And with that -- and again, in consultation with the
6 Committee, in collaboration with them, we decided that we would
7 call -- and I'm not sure what the right terminology in this
8 Court is. We refer to him as Judge Sontchi. I know you called
9 him Mr. Sontchi. I don't want to be disrespectful, but -- the
10 gentleman on the line known as Christopher Sontchi.

11 And we decided that we would call him in and see if
12 he was willing to come and look at this clean and fresh,
13 without the overlay of anything that's been transpiring in
14 Houston, and without the cloud, so that when we come to
15 Your Honor for approval, it's clean and fresh, and you're
16 looking at it just on the merits, without any other overlay of
17 any potential conflicts or anything else.

18 And Judge Sontchi agreed to do that. And as a
19 result, we filed what appears at Docket Number -- and you took
20 me a little off my game here. I forgot what docket number it
21 is, but we filed the joint stip and agreed order at that
22 Docket Number -- 1095, I believe, Your Honor.

23 THE COURT: I think that's right.

24 MR. BROOKNER: It was at 1095. And before we filed
25 that, two days before we filed it, we conferred with the Office



1 of the U.S. Trustee. That was Mr. Zluticky and Ms. Webb of my
2 office, spoke to Mr. Nguyen, Mr. Jimenez, and they agreed that
3 reopening the mediation and relooking at the deal made sense,
4 but didn't really provide any other substantive comments to
5 anything.

6 So we filed the stipulation, which appears again at
7 Docket 1095, in order to re-tee this all up on a clean basis.
8 The U.S. Trustee filed their pleading, raising a couple of
9 different issues, which, you know, could have been dealt with
10 on a phone call. But, regardless, we filed a response to that.
11 You set a hearing on it.

12 And last night, we filed an amended form of
13 stipulation at Docket Number 1105, and there's a redline
14 attached, which implements certain of the changes requested by
15 the Office of the U.S. Trustee: number one, that pursuant to
16 the mediation procedures and the complex rules, the parties
17 will agree to equally bear the cost of the mediation; and
18 number two, to the extent that the estate is going to bear the
19 costs, the mediator will file a fee application in accordance
20 with the local rules and procedures.

21 THE COURT: Tell me how you think the cost of the
22 mediation works now.

23 MR. BROOKNER: So --

24 THE COURT: Under the revised stip, just so there's
25 clarity on the record.



1 MR. BROOKNER: So, honestly, Your Honor, what we had
2 always intended was that the cost of the stipulation [sic] --
3 and the Committee and I talked, Mr. Zluticky and I talked about
4 this, and we spoke to the settlement parties. And although
5 they have agreed to bear the cost of the mediation without any
6 cost to the estate, Mr. Zluticky and I felt that, despite that,
7 in order to maintain transparency and ensure that there was no
8 question about any conflicts or preferences -- because we
9 originally set up that the estate would bear the cost, but that
10 we would nonetheless be discussing that issue at mediation with
11 Judge Sontchi to make sure that the estate was not in any way
12 negatively affected by the need to remediate the matters.

13 THE COURT: Does the estate have the funds on hand to
14 pay for mediation now? In other words, I'm authorizing the
15 estate to pay for the mediator. As it stands now, if I would
16 have signed that order, would the estate have had the funds on
17 hand to pay the mediator?

18 MR. BROOKNER: They would have come from the
19 settlement proceeds, one way or the other. They would have had
20 to come from --

21 THE COURT: That's what I'm saying. But if I don't
22 approve the settlement, then Mr. Sontchi's -- did work that
23 there's no form of payment for.

24 MR. BROOKNER: Well, again, Your Honor, we were
25 expecting this to be dealt with at mediation, and we would have



1 expected that part of any settlement --

2 THE COURT: I just think it's important that we're
3 having the conversation today, because those are the questions
4 that I have. But, unfortunately, I can't pick up the phone,
5 right? I've got to hold status conferences, which is really
6 kind of why --

7 MR. BROOKNER: Indeed.

8 THE COURT: -- I called it today. And I got it.
9 There's noise, I think, in terms of, you know, kind of where
10 things were before. So I understand. I think it's helpful.
11 Thank you.

12 MR. BROOKNER: You're welcome. And so let me just be
13 clear. We are happy to have the stipulation say that the
14 non-debtor, non-Committee settling parties will bear the cost
15 of the mediation, whether it settles or not, and we understand
16 from those parties that they're willing to do that.

17 Now that it's open and it's out there, if everyone's
18 okay with that, we can put that in the stipulation. But we
19 were trying to be conservative and careful so that nobody had
20 any questions about how this was all going to go down.

21 THE COURT: I understand.

22 MR. BROOKNER: So we're happy to modify the stip
23 accordingly. That all being said, where we are, subject to
24 Your Honor approving the stip with whatever additional changes
25 we think we need to make, or you think we need to make, we are



1 prepared to go forward with Judge Sontchi.

2 Originally, we were going to go tomorrow. But
3 because you reset this and we further communicated with the
4 Office of the U.S. Trustee, we are now all lined up and
5 prepared to go forward on the Monday after Thanksgiving,
6 November 27th.

7 And I think Mr. Zluticky is going to get into this a
8 little bit when he gets up. I don't want to imprompt [sic]
9 him. We will then, in order to make sure there's no background
10 noise and to make sure there's clarity and no confusion, we
11 will immediately at the end of mediation, assuming that a deal
12 has been reached, file a separate standalone 9019 motion.

13 And we will come in on that motion on the merits of
14 the 9019, without the plan, without the disclosure statement
15 and any of those accoutrements, to seek approval from
16 Your Honor, hopefully by the end of December, give or take
17 December 20th, if it works for chambers, subject to -- assuming
18 that you approve it, it will be subject to plan confirmation.
19 Because there will be elements of the settlement, as you know,
20 the releases, et cetera, that will have to be baked into a
21 plan.

22 But Your Honor can take up the economic elements of
23 the settlement. And assuming that you approve it, assuming
24 that we meet our burden under 9019, we can roll that into the
25 plan and disclosure statement and come back for a separate



1 confirmation hearing without confusing and combining, if you
2 will, the plan elements with the settlement elements. And
3 again, collaboratively, we thought that was the cleanest way to
4 approach this, given the way everything has played out between,
5 you know, September, if you will, and today.

6 THE COURT: Okay.

7 MR. BROOKNER: And as Your Honor knows, Mr. Sontchi
8 is on the phone. We invited him on purpose today. He agreed
9 to come so that if Your Honor had any questions at all, he was
10 available to talk to you and hopefully get you comfortable with
11 the process and the procedure that we are now proposing to
12 follow.

13 THE COURT: Thank you very much.

14 MR. BROOKNER: Thank you, Your Honor.

15 THE COURT: Alrighty. Anyone else wish to be heard?

16 MR. SONTCHI: Your Honor, if I may, this is Chris
17 Sontchi. With regard to payment, which is an issue near and
18 dear to my heart, of course, I feel perfectly comfortable as
19 the mediator getting paid from non-debtor parties.

20 I routinely, when I handle mediations that involve
21 the estate, we routinely get paid usually by the estate and not
22 the other parties. And I've never had an opportunity -- I've
23 never had an issue arise where someone's questioned the
24 mediation based on the fact that the money's coming from the
25 estate. This would sort of be the opposite of that. But



1 | however you wish to proceed is, of course, fine with me.

2 | THE COURT: No, I appreciate it, Mr. Sontchi. And I
3 | agree with you. That's not going to be a stumbling block for
4 | me. I just wanted to make sure that it was clear that if you
5 | did work, that you would be compensated for the work, and that
6 | I wouldn't be setting up a situation where just the debtor was
7 | authorized to compensate the mediator and then, you know,
8 | having the terrible situation where the mediator is then
9 | chasing someone for a fee.

10 | I just thought there ought to be clarity as to the
11 | process to make sure that everybody understood that, if I
12 | authorize the mediation, that, you know, the mediator's going
13 | to have a job to do and should be compensated for the work if
14 | I'm going to authorize it, so -- but I appreciate it.

15 | Let me hear from Mr. Zluticky, and then I'll hear
16 | from the U.S. Trustee, and then I'll share some thoughts.

17 | MR. ZLUTICKY: Thank you, Your Honor. Good morning.
18 | Nick Zluticky for the Committee. A month ago, we were here on
19 | an expedited hearing seeking conditional approval of a
20 | disclosure statement, and it was based on a plan that
21 | incorporated the global settlement that came out of the August
22 | mediation.

23 | But circumstances have changed. And so today we're
24 | asking the Court to allow us to remediate the estate's claims
25 | and are putting forth a process that gives the Court and



1 | creditors the full time periods provided for under the rules to
2 | evaluate a settlement if one can be reached, to examine any
3 | revised disclosure statement that might reflect that, and
4 | ultimately to evaluate and be heard on any plan.

5 | I stood up a month ago and asked Your Honor to
6 | approve the disclosure statement because the Committee had an
7 | obligation to support the global settlement so long as it was
8 | viable. The different approach I'm asking the Court to allow
9 | us to take today is a direct reflection of what we've heard
10 | from the Court, the United States Trustee, and creditors, that
11 | has led us to conclude it no longer is.

12 | Your Honor told us that without more information
13 | about the claims being settled and the parties implicated by
14 | the releases, creditors outside the Committee didn't know
15 | enough to evaluate the deal. So we worked with the debtor to
16 | make significant and substantial revisions to the disclosure
17 | statement to address those concerns.

18 | The U.S. Trustee and many creditors echoed the
19 | concerns of the Committee about whether recent revelations have
20 | tainted the first mediation so much that no settlement reached
21 | could be trusted. And we've now realized these concerns make
22 | it impossible to focus on the fundamentals of the deal.

23 | Additionally, the fact that one of the settling
24 | parties' counsel may have been responsible for that conflict
25 | has certainly changed the Committee's and creditors' views on



1 some cost provisions.

2 Finally, we've heard from creditors, from Your Honor,
3 and from the U.S. Trustee, that trying to evaluate and
4 understand the settlement, the disclosure statement, and the
5 plan all at once was simply too much to ask, given the makeup
6 of the creditor pool in this case. For example, it was
7 conflating issues about whether the settlement was a good deal
8 with plan issues about whether distributions to creditors were
9 fair and equitable.

10 We've been pursuing an accelerated timeline to try to
11 get money in creditors' hands more quickly, but what we've
12 heard is that creditors and the United States Trustee would
13 rather take additional time to identify any issues they have
14 and work with the Committee and the debtor to address them
15 before confirmation.

16 And so the approach that we're outlining for the
17 Court today is a lot different than what we talked about last
18 month, but it pursues the exact same goal: maximizing the
19 value of estate assets for all creditors. But it does so in a
20 way that gives creditors, the Court, and the United States
21 Trustee more time and opportunity to take up the legal
22 questions of whether and how any proposed resolutions do that.

23 It's going to allow the parties to be fully heard on
24 any settlement as a part of a separate Rule 9019. And if we're
25 able to reach an agreement at mediation, Your Honor, it is



1 going to be because we revisited the fundamentals of the deal.

2 That is absolutely what we're doing. Judge Sontchi
3 has made it clear to us, and we wholeheartedly agree, that he's
4 not here to review the existing deal and tell us whether it's
5 good or bad. He's here to mediate this case. And we fully
6 expect that that's going to happen. And we will come out of
7 there with no deal or we will come out of there with a new
8 deal, the fundamentals of which will be different.

9 THE COURT: Thank you.

10 MR. ZLUTICKY: The Court entered this stipulated
11 order in which the debtor, the Committee -- well, what we're
12 asking the Court to do is to enter this stipulated order that
13 would appoint Judge Sontchi as the mediator. And if we're able
14 to reach an agreement, we'll file a 9019, and we will be here
15 just on the 9019. It's just going to focus on the fundamentals
16 of the deal. Is this a good deal or not? And it's not going
17 to focus on all of the disclosure, all the plan issues.

18 I've heard you and I've heard from the United States
19 Trustee and other creditors, that's just too much to take up at
20 one time, given the fact that we have so many folks in this
21 case who lack access, who need more notice, who need more time.
22 And so we want to give people the full time period to do that.

23 And so moving forward in this way will not only
24 address the U.S. Trustee's concerns and the creditors'
25 concerns, it's going to take us back to what's always our



1 guiding principle: the Bankruptcy Code and the Federal Rules
2 of Bankruptcy Procedure.

3 Through no fault of Your Honor, parties, there's a
4 lot of discussion in this case that's centered around
5 non-bankruptcy issues and non-legal issues that have happened
6 outside the courtroom. And one thing I think we can all agree
7 on is that whatever the outcome is in this case, it should be
8 an outcome that results from evidentiary hearings, hearings
9 where the arguments, evidence and decisions are firmly rooted
10 in the Bankruptcy Code; and this approach that the Committee is
11 asking the Court to take today will help ensure that that goal
12 is achieved.

13 THE COURT: Thank you.

14 MR. ZLUTICKY: Thank you.

15 THE COURT: Mr. Nguyen.

16 MR. NGUYEN: Thank you, Your Honor. Ha Nguyen for
17 the U.S. Trustee. Your Honor, thank you for having this
18 hearing on such a short notice. We filed the emergency motion
19 partially over the concern that sometimes stipulation and
20 agreed order gets entered without a hearing. So we tried to
21 get that motion on file as soon as possible. And given the
22 issue of transparency in the case -- in this case over the
23 prior mediation, I really do appreciate the Court giving the
24 parties the opportunity to be heard and address the stipulation
25 and agreed order.



1 As we wrote in our motion, one of the issues from the
2 U.S. Trustee's perspective in the last couple weeks is when we
3 have received a request from several personal injury claimants
4 that have stated that they felt that they were not adequately
5 represented by the UCC, and when people, especially in this
6 category of vulnerability, tells us that they feel that they're
7 not being heard, that they want adequate representation, they
8 want a seat at the second mediation, we have to listen. And we
9 take their concerns seriously, and we will evaluate this
10 request and do our due diligence.

11 And I just want to be clear on this point, and I
12 spoke with Mr. Zluticky -- and I apologize, I'm fumbling over
13 his last name. The request is not an indictment on counsel or
14 Stinson or any of the professionals within the UCC. If the
15 Court asks me about Mr. Zluticky I will only have good things
16 to say about him and the work that his team has done.

17 However, in tort bankruptcy cases such as this one,
18 it's not uncommon for commercial -- vendors and other
19 commercial unsecured creditors to have a different, divergent
20 interest with tort claimants. And sometimes it's not
21 appropriate for one committee to represent the interests of
22 both.

23 What we have been doing over the last couple of days,
24 so the Court knows, there is work being done behind the scenes,
25 is we've been gathering position papers from the debtors, the



1 Committee, and I can tell the Court that there are strong
2 oppositions to the appointment of an additional committee.

3 But, on the other hand, there are also very
4 passionate arguments that are being made, by not just this
5 particular group of personal injury claimants that have
6 submitted the request, but we've been getting emails from other
7 personal injury claimants from all over the country saying,
8 hey, we need an additional committee. These are the reasons
9 why.

10 Your Honor, in terms of the process of us making that
11 determination of whether we are going to appoint an additional
12 tort committee, we are at the tail end of that process. But we
13 still have work to do. We intend to meet and discuss with the
14 two PI claimants that are on the Official Committee, and
15 Counsel has made them available to us. We are also going to
16 meet with the chairperson of the Committee and we will consider
17 any other input from anyone else, including the Court, if it
18 has any.

19 The U.S. Trustee will do his due diligence and will
20 exercise his statutory duties and get a decision that we
21 believe is right in the next day or two. And if parties
22 disagree with the decision, there are remedies under the Code
23 that they can bring before you. And that's with regards to the
24 tort committee.

25 But another point I want to raise with the Court is



1 | there were some suggestions in the paper that we gave
2 | insufficient time for parties to respond to the request for PI
3 | claimant. Jamming people is not something I do.

4 | THE COURT: I don't think you have to respond to
5 | that.

6 | MR. NGUYEN: But, Your Honor, we responded
7 | accordingly to what was happening in the case. The reason for
8 | that breakneck speed on the response time was that the initial
9 | stipulation asked for mediation to occur tomorrow.

10 | THE COURT: Yeah.

11 | MR. NGUYEN: And it was really important for us to
12 | get that decision rendered before mediation goes forward. We
13 | moved quickly given this timetable, and we wanted to make sure
14 | that we have responses in place. Mr. Brookner and his team
15 | provide invaluable perspective on these things, and we wanted
16 | their input should we need to make that decision under the
17 | initial timetable.

18 | Under the revised stipulation that was filed last
19 | night, I was glad to see that mediation will occur
20 | November 27th. We appreciate the parties for not holding
21 | mediation tomorrow, and I think it's appropriate to kick it
22 | out to the 27th.

23 | With respect to the mediation itself, I think we
24 | stated in our papers that we do believe that a do-over of the
25 | initial mediation is appropriate. If parties want to have a



1 restart, given the undisclosed conflict that we believe tainted
2 the prior (break in audio) settlement, we are supportive of
3 that process.

4 However, the stipulation gives -- although it's
5 characterized as a second mediation, it gives the U.S. Trustee
6 a lot of pause. I know the Court knows the role of a mediator,
7 having been one in many cases. The mediator is there to
8 mediate disputes. I think the mediator is supposed to bring
9 parties into an agreement.

10 I have never seen a mediator mediate an agreement
11 before. And let me tell you what I mean by that. In the
12 stipulation, there are pronouncements by the mediating parties
13 at the starting line of the second mediation saying they are in
14 agreement of the prior deal.

15 What is left for the mediation if the parties are
16 already in agreement? Whether it's Judge Sontchi, Judge Isgur
17 yourself, or even Judge Judy, I think the job of the judicial
18 mediator would simply say the job is done. The parties are in
19 agreement. They like the prior deal.

20 Again, the role of the mediator is to mediate
21 disputes. And when there are no disputes, I kind of have
22 issues with that because I don't see the value of the second
23 mediation if the party -- if it is the parties' intent to
24 pursue the initial settlement.

25 If this is truly the intent, I think we're really



1 | wasting our time. If they come back with the same deal, with
2 | another mediator putting his hand to it, I think the parties
3 | should just go ahead and go forward with the case on
4 | December 6th with their initial deal. I don't think we need
5 | to go through the second process if that initial deal is going
6 | to be presented to you over the next couple of weeks.

7 | The U.S. Trustee, we raised concerns about the
8 | amended plan. The parties have their deal. Parties can
9 | object, and we should just get a thumbs up or thumbs down from
10 | the Court. I just don't see the value in having the same
11 | parties get into the room with a different mediator if they
12 | already have an agreement in place. And they made it clear in
13 | their stipulation that they thought the prior deal was a good
14 | deal, and they're in agreement with the prior deal.

15 | THE COURT: I think they're entitled to that. I
16 | think they're entitled to believe what they put their names on
17 | and ask the Court to approve in a disclosure statement was a
18 | fair deal.

19 | The reason I called this hearing today was to -- one,
20 | I thought it made sense to just flesh out kind of what was
21 | going to happen in the mediation. I didn't know. I only know
22 | what I read. And so I didn't know what the purpose of the
23 | mediation was, what role they had envisioned for the mediator,
24 | and what the mediator thought his role would be.

25 | There's no question that Mr. Sontchi is eminently



1 qualified to serve as a mediator. Let's just take that off the
2 table. Few people better qualified in the country than him to
3 do that. So the selection makes a lot of sense to me.

4 I also wanted people to understand. I got, you know,
5 that the mediation comes with a little bit of clout, but I
6 never really liked the deal. And I've been saying that, right?
7 And that doesn't mean I don't like the whole deal or -- I
8 didn't know if the amount of money was right. I didn't like
9 the allocation, the way it was presented, right?

10 So I told everybody to rethink the deal about what
11 was going on. I know -- you know, the first disclosure
12 statement -- and now I'm putting a little bit more on the
13 table, but I did tell everybody to rethink the deal.

14 The first disclosure statement needed better
15 disclosure. Not more disclosure, just better disclosure. And
16 it doesn't mean people didn't work hard. It doesn't mean that
17 disclosure statements don't, to the very last minute, add
18 additional information. But there were points in there that
19 were clear that it was going to be difficult for someone to
20 understand how to vote on the plan and, quite frankly, for me
21 to evaluate what the deal was.

22 I still couldn't tell from the first disclosure
23 statement whether the debtor was filed with any money or no
24 money, and what the result of the funding agreement was. Maybe
25 I just didn't read it carefully enough, but I couldn't tell.



1 Now I can really tell.

2 So it then makes me ask more questions, right? So if
3 a debtor was filed with no cash, and now I have a DIP lender
4 asking for payment, well, maybe I ought to ask more questions
5 there. I don't know what the global settlement was. I now
6 know more about the parties than I did before.

7 So I think we now have better disclosure. But now
8 folks need to rethink the deal. And it may not be reshuffling
9 all the chairs. It may just be tweaks here or there. I don't
10 know. But what I wanted to make sure was that Mr. Sontchi
11 heard from me, and it sounds like, based on Mr. Zloticky's
12 comments, it's exactly the same thing.

13 I didn't want him mediating with one hand tied behind
14 his back. I didn't want him to simply be there to check
15 someone's homework, right? It was to then -- if he was going
16 to serve as mediator, that meant everything was on the table.
17 If you're going to bring in someone who's as experienced as
18 him, then he gets to take a look at everything. And then he
19 gets to -- you know, and I don't know what the deal looks like
20 there.

21 But if we were going to bring in Mr. Sontchi, one, I
22 wanted to make sure that he knew that I was uncomfortable with
23 certain parts of the deal. Not saying people couldn't get me
24 over the hump on it. I just -- right? We haven't taken any
25 evidence. I just, on its face, there was just a lack of



1 transparency, which I think the disclosure statements now
2 provide more transparency for sure.

3 A lot of folks are getting released. And maybe
4 sometimes that's fine. But I needed to understand, you know,
5 kind of why the allocation was that way, and whether that was
6 really enough money being brought on the table. Maybe it is.
7 But I wanted Mr. Sontchi to have full flexibility to be able to
8 look at everything and make a determination. And I needed the
9 mediation parties, not just the debtor and the Committee, but
10 everybody else to be involved, to understand.

11 And I don't know if this is a -- maybe it's a
12 half-day mediation. Maybe it's a multi-day mediation. I don't
13 know what -- but if I'm going to give Mr. Sontchi the authority
14 to go out there and mediate, then -- and I don't know how much
15 it's going to cost.

16 And I just needed everyone to feel really
17 comfortable. And I didn't know if folks had a preset budget in
18 their heads as to what it was going to cost. I just wanted
19 everyone to get comfortable. So that's why I asked the
20 question about cost. I didn't want someone to stop in the
21 middle of mediation and say, this is too much, or I didn't sign
22 up for this. Before you start, let's all just rethink kind of
23 where we are.

24 And I'm going to let the debtor come back with
25 whatever deal they have. But I am concerned about cost. I am



1 concerned about the time of this case. I'm concerned about
2 admin cost.

3 I think, if mediation is successful, then this is
4 really the shot, right? Because there's just not enough --
5 just quite frankly, we are where we are. And so I think, you
6 know, one way or the other, come late December, early January,
7 there's got to be a decision as to what happens in this case
8 one way or the other. And I've got to make hard decisions
9 about what happens in the adversary one way or the other.

10 And that's just -- we kind of are where we are. I'm
11 not saying anything everybody else doesn't know, which is why I
12 think -- I understand why the parties wanted to go to mediation
13 very quickly, because time is of the essence and there's only
14 so much you can do. And it's hard to get people to agree to a
15 date when you get around this time period anyway, and it gets
16 tricky. And so if you can nail a date, you just want people to
17 show up. I got it.

18 But I wanted everyone to just kind of understand. I
19 appreciate Mr. Sontchi dialing in today so he can hear it
20 directly from me. I'm concerned about kind of where we are,
21 just -- doesn't mean we can't get somewhere here. I think
22 costs are an issue for me.

23 So this mediation, parties just have to really put
24 their best effort forward on this. And I'm not saying they
25 didn't do it the last time. And it's not unrare for parties --



1 for a judge to say, you know, I don't like this one. I still
2 have to make it approved. So it's not an indictment on the
3 first deal. I just want to make sure that it's -- the best
4 deal.

5 And now, you know, I don't know what happened in the
6 first mediation. I know what was put on paper and I had some
7 questions about it and some concerns in light of where we are.
8 And I wanted Mr. Sontchi to know he had the freedom to take a
9 look at everything. Maybe he likes it, maybe he doesn't. But
10 he gets to do his job. And I wanted everybody to feel really
11 comfortable with that before we went into it. It's really what
12 I wanted to do.

13 So I'm comfortable signing this stip. I also want to
14 make sure -- and I know he's comfortable kind of making sure
15 about his compensation. I just wanted to make sure that he
16 wasn't going to go chasing anyone. And I would do this for any
17 mediator, that there's money there to compensate the mediator
18 for the work that the mediator is going to do. I just wanted
19 to make sure everybody just kind of thought about that.

20 So I'm comfortable signing the stip. I think y'all
21 are seeking to go fast in terms of setting up a time to mediate
22 again. So you're not, you know, waiting 60 days to set up
23 another date. So you're going fast. So I got it. So, if
24 you've got a date, I won't stand in the way. There's no
25 question Mr. Sontchi's qualified, as I said.



1 So I think, with that understanding, if the parties
2 are comfortable proceeding -- and I wanted to give everyone an
3 opportunity to think about it before you started, kind of the
4 way I thought about the deal, you know, let's just see where it
5 goes and let's see what happens.

6 But, you know, I would rather the debtor stay focused
7 and the Committee stay focused. If mediation's the goal, then
8 stay focused on that for the next few weeks and see what can
9 come. And I got it, you know, there's a bunch of holidays that
10 are going to come up over the next 30, 45 days. And I'm
11 incredibly respectful of that.

12 And so I've got an adversary that I've got to kind of
13 figure out. That's why I think January, this case has to find
14 its ultimate conclusion one way or the other. So, but I know
15 the debtor feels the same way. And so do other parties as
16 well. They want to be heard and they want finality one way or
17 the other. So let's just see where it goes.

18 I'm comfortable signing the stip as stated. I think
19 let's just see where we go. Yes, Mr. Brookner.

20 MR. BROOKNER: Thank you, Your Honor. Your Honor,
21 first and foremost, I want to thank you for your comments.
22 Second, obviously, maybe not obviously, but the debtor
23 certainly concurs with this, as does the Committee. And our
24 intent, as I mentioned at the beginning, with Mr. Sontchi, was
25 that he'd have full reign to do whatever he thought he needed



1 to do.

2 So I wanted that to be -- to put a point on that and
3 to make it clear again to Your Honor. Two -- one question and
4 then one comment about timing and then one off-menu item before
5 we conclude, if that's okay.

6 THE COURT: Okay.

7 MR. BROOKNER: The question is, because the debtor is
8 also very sensitive to both timing and cost, would you be okay
9 if we slightly modify the existing form of stipulation to
10 provide specifically that the non-estate settling parties will
11 bear the cost of the mediation regardless of whether there is
12 a settlement or not, which will then give both you and
13 Mr. Sontchi comfort that he's going to get paid for his time
14 without worrying about estate funding, which will be the
15 professionals' issue?

16 THE COURT: Yeah, I've got no issues with that. And
17 I feel comfortable signing that.

18 MR. BROOKNER: Okay. And my team is listening, and
19 so they will make that appropriate change, we'll circulate it,
20 and then we'll --

21 THE COURT: But I want everybody to think about so
22 that the -- you know, the other parties involved -- and
23 Ms. Hayward's clients -- had an opportunity to hear it from me
24 and to know. In other words, instead of me tweaking the stip
25 and then signing it or saying this is what you will do, then



1 give everyone an opportunity to sit back and think about it and
2 talk to their clients about kind of what the mediation would
3 look like.

4 MR. BROOKNER: Right. Okay. So we will -- like I
5 said, my team is listening. We will make that slight change to
6 the cost portion, and we'll leave, I think, everything else for
7 the -- we won't change the issue about a fee application or
8 anything. We'll leave that in there. We'll just change the
9 cost provision about who bears the cost.

10 Second, on timing, Your Honor -- you know, and again,
11 this is probably a longer discussion. It doesn't seem like
12 it's the right time and the right place today. But I'm not
13 sure, given the timing of where we are in the separate 9019 and
14 in the plan, that we can be done in January. I think where we
15 wind up is in January, we come in for a disclosure statement
16 hearing, assuming that Your Honor approves the 9019 --

17 THE COURT: I got it.

18 MR. BROOKNER: -- at the end of December, the
19 beginning of January.

20 THE COURT: I didn't mean the whole case either be
21 confirmed or not confirmed. I just meant decisions being made.
22 Is there a deal?

23 MR. BROOKNER: Okay.

24 THE COURT: Has it been approved? You know, is there
25 something that the Court will make a decision up or down on?



1 MR. BROOKNER: Got it.

2 THE COURT: That's what I meant.

3 MR. BROOKNER: Got it.

4 THE COURT: I should have been clear about that.

5 MR. BROOKNER: We got it. That's great, Your Honor.

6 Thank you for that. And you do need to understand, or if
7 you -- sorry, you don't need to do anything. You should
8 understand that the professionals are very cognizant of both
9 the cost and the timing of this case, as are the respective
10 clients.

11 We want to get out of here as soon as possible. Time
12 is not anybody's friend, and we're aware of that. And we've
13 been working under that assumption or that point, but with an
14 eye towards making sure that we dot all the I's and cross all
15 the T's to make sure we don't have any lapses in procedure
16 notice, et cetera.

17 THE COURT: Got it.

18 MR. BROOKNER: So we're hip to that. And we thank
19 you for that.

20 The last thing that I wanted to mention, unless
21 somebody else wanted to say something about --

22 THE COURT: I've got other hearings, so what else do
23 you have?

24 MR. BROOKNER: -- was that -- again, period here, a
25 new paragraph, off-menu item. We were here last week on a



1 motion to lift stay with respect to the business insider
2 because they wanted to go to unseal certain records in
3 Missouri.

4 THE COURT: Uh-huh.

5 MR. BROOKNER: Again, we tried to hear Your Honor
6 clearly. We heard Your Honor. We spoke to them yesterday. We
7 are working on a form of stipulation to get them out of this
8 Court and let them go to Missouri, and we hope to present that
9 to Your Honor in the next few days --

10 THE COURT: If you upload a stip, I won't get in the
11 way of it.

12 MR. BROOKNER: No, no. I'm saying it's going to take
13 a couple of days just to coordinate with them, but we hope to
14 get that off your plate in the next day or two, and then they
15 can have their day in court and be of their own devices in
16 Missouri.

17 THE COURT: If the parties reach a resolution on the
18 lift stay, just upload a stip, and I'll take a look at it, and
19 I may just sign it.

20 MR. BROOKNER: Very well. Just wanted you to know it
21 was coming.

22 THE COURT: Okay. Thank you very much. I very much
23 appreciate it.

24 All right, folks. Thank you very much. I'm going to
25 just give everyone about three or four minutes to clear out.



1 I'm going to start at 9:30 with the nine o'clock docket. Thank
2 you very much.

3 (Proceedings concluded at 9:26 a.m.)

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14 C E R T I F I C A T I O N

15

16 I, Alicia Jarrett, court-approved transcriber, hereby
17 certify that the foregoing is a correct transcript from the
18 official electronic sound recording of the proceedings in the
19 above-entitled matter.

20

21

22

23

24 ALICIA JARRETT, AAERT NO. 428 DATE: November 22, 2023

25 ACCESS TRANSCRIPTS, LLC



**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS**

In Re: Tehum Care Services, Inc.
Debtor

Case No.: 23-90086

Chapter: 11

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

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- the last four digits of the social security number or taxpayer identification number;
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- the minor's initials;
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Nathan Ochsner
Clerk of Court